



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 89-6

Application of the Code to Members of a Quasi-Public Agency

Mr. David C. Driver, President of the Connecticut Product Development Corporation (CPDC), has asked several questions regarding the applicability of the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes to members of a quasi-public agency.

Effective January 1, 1989, the officials and employees of the State's quasi-public agencies became subject to the Code of Ethics for Public Officials. P.A. 88-225. The CPDC is a quasi-public agency as defined in subsection 1-79(1) of the Code.

The CPDC was established to provide State financial assistance for the development of products, innovation and invention for industry in Connecticut. See Section 32-33, General Statutes. The CPDC is governed by a board of seven directors, at least five of whom shall be knowledgeable and have experience in the area of the development of technological invention. Subsection 32-35(b), General Statutes. The CPDC has a separate loan board, the Connecticut Innovation Development Loan Fund (CID), whose members are appointed by the CPDC board.

Taking Mr. Driver's questions in turn:

(1) Five of the seven board members are business people. Will they be required to list every contract of \$5,000 or more on their Statements of Financial Interests?

Members or directors of each quasi-public agency must file a Statement of Financial Interests with the Commission. Section 1-83, General Statutes. The statute requires the disclosure, not of contracts, but of specific clients and customers who provided more than five thousand dollars of net income during the previous year to the individual required to file, his or her spouse, dependent children residing in the individual's household, or a business with which the individual was associated. Subparagraph 1-83(b)(1)(B). This requirement is quantitatively unrestricted and must be complied with regardless of the number of clients and customers involved. See Advisory Opinion No. 88-23, 50 Conn. L.J. No. 28, p. 3C (January 10, 1989).

Phone: (203) 566-4472

97 Elm Street (rear) • Hartford, Connecticut 06106

An Equal Opportunity Employer

(2) Some of the board members' spouses are also in business. Will the spouses' contracts also have to be listed?

As discussed supra 1-83(b)(1)(B) requires the disclosure of clients and customers who provided more than five thousand dollars of net income to the spouse of the individual required to file.

(3) Will the contracted companies' names be available for public scrutiny (i.e. competitors)?

The list of names of clients and customers who provided more than five thousand dollars of net income "shall be sealed and confidential and for the use of the Commission only after a complaint has been filed under section 1-82 and such complaint has been determined by a vote of the Commission to be of sufficient merit and gravity to justify the unsealing of such list or lists and not open to public inspection unless the respondent requests otherwise". Subsection 1-83(c), General Statutes.

(4) Will each individual contract amount have to be listed or just the names of the firms?

Only the names of the firms who provide more than five thousand dollars of net income must be disclosed. Amounts of income do not need to be specified. Subparagraph 1-83(b)(1)(B).

(5) The board members are in the same business as the Connecticut Product Development Corporation -- investing in entrepreneurial start-ups and companies. Will board members be prohibited from bringing any of their clients to the CPDC board for funding approval?

When a board member comes from the business, industry, or other activity over which the board has authority there exists an inherent conflict of interests. In this case, the board members will have invested in a company which they now want the CPDC to fund. If the CPDC were to provide the additional capital, it may contribute to the financial success of the company.

In general, a public official may not use his or her public position to obtain personal financial gain. Subsection 1-84(c). However, notwithstanding the provisions of the Code of Ethics for Public Officials, it shall not constitute a conflict of interests for a board member to have a financial interest in a firm or corporation eligible for CPDC funding, provided the

"...individual shall abstain from deliberation, action or vote by the Connecticut Product Development Corporation in specific respect to such firm or corporation". Subsection 32-35(e), General Statutes. Therefore, the board member can suggest to his client that he or she contact the CPDC and the board member's name can appear, as necessary, on any application documents. However, in order to avoid any inadvertent use of public position, the board member must not take any affirmative action to advance the case of his or her client before the CPDC, including personally introducing clients to the CPDC staff or other board members. Otherwise, the appearance of use of office and the risk of undue influence would be inescapable, since the board and staff might well not be able to evaluate objectively and fairly all applications before the CPDC.

(6) If a board member does business with a CPDC candidate already, must he or she abstain from discussion and voting?

As discussed in response to question #5 supra, there is no conflict of interests if a board member does business with a CPDC candidate as long as the member "shall abstain from deliberation, action or vote by the Connecticut Product Development Corporation in specific respect to such person, firm or corporation." Id. Therefore, the member must abstain from discussion and voting regarding a CPDC candidate with whom he or she does business.

(7) Is CPDC prohibited from funding a candidate who is already doing business with a board member's company?

CPDC is not prohibited from funding a candidate who is already doing business with a board member's company provided that the board member abstain from "deliberation, action, or vote" with respect to such candidate. Id.

(8) Once CPDC approves funding for a company, are board members prohibited from also investing (either personally or by way of their business) in that same company?

Once a company is approved for CPDC funding, the board member is not barred either personally or by way of his or her business, from investing in the same company. However, since the member would not be able to act if he had a financial interest in the company prior to the approval, the member cannot act with the intention of investing immediately after favorable action by the board.

(9) Are CPDC board members' client companies allowed to receive State assistance from other boards and agencies that are not officially linked to CPDC?

CPDC board members' client companies are allowed to receive State assistance from other boards and agencies. However, the board members may not use their position or contacts derived therefrom to obtain favorable treatment for their clients from other State boards or agencies. Subsection 1-84(c).

(10) Are unclassified staff members of CPDC permitted to invest in client companies (i.e. buy stock)?

"...[A]ny employee of a quasi-public agency..." is now defined as a State employee for purposes of the Code. Subsection 1-79(m), General Statutes. Therefore, these employees are covered by the conflict of interests provisions of the Code of Ethics for Public Officials. They do not, however, fall within the exception provided for the members of the board of directors of CPDC in subsection 32-35(e), General Statutes. The staff of the corporation is responsible for the investigation and report concerning the advisability of approving financial aid for all candidates. See Section 32-40, General Statutes. It is the basis of this report on which the board members approve or deny an application. Id. Therefore, the employees must not be allowed to invest in client companies in order to avoid use of office, real or apparent, for personal financial gain in violation of subsection 1-84(c).

(11) Do the non-CPDC members of the CID board have to file statements of financial interests?

The non-CPDC members of the CID board do not have to file Statements of Financial Interests. Section 1-83 of the Code of Ethics for Public Officials requires the filing of a Statement of Financial Interests by members or directors of each quasi-public agency subject to the Code and such employees of the quasi-public agencies as the Governor may designate. Even if the non-CPDC board members of the CID are considered to be employees of the quasi-public agency, the Governor has not designated them as individuals required to file.

(12) CPDC has also invested \$5 million in a Limited Partnership set up to provide pure venture capital to early stage companies. The investment is in a pool to which private industry also contributes another \$5 million. The Connecticut

Seed Venture Fund, as it is called, is run by a Managing Partner, who happens to be a private venture capitalist who is paid from the fund. Does the Managing Partner have to file a statement of financial interests?

Section 32-39a, General Statutes, gives the CPDC the power to invest in certain limited partnerships. The Connecticut Seed Venture Fund is such a partnership. The CPDC does not have decision-making authority or control over this fund. Therefore, the Managing Partner is an employee solely of an investment vehicle of a Connecticut quasi-public agency, and is not covered by the Code of Ethics for Public Officials. Consequently, the Managing Partner does not have to file a Statement of Financial Interests with the Ethics Commission.

(13) Is the Managing Partner restricted from investing his own funds (personal or other corporate) in clients which receive Connecticut Seed Venture funds?

As discussed in response to question 12 *supra*, the Managing Partner is not covered by the Code of Ethics for Public Officials, and is not subject to any of its investment restrictions.

By Order of the Commission,



William A. Elrick
Chairperson

Dated 2/6/89

